

herein.

1. This action is brought by plaintiff on the basis of discrimination against her in the terms and conditions of her employment; on the basis of the Plaintiff's age in violation of the Age Discrimination in Employment Act (29 U.S.C. Sec. 621 -634), and race in violation of Title VII of the Civil Rights Act of 1964, as amended, and Section 1981 of the Civil Rights Act, 42 U.S.C. Section 2000(e) et seq.; and for retaliation; and in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA") as amended by the Equal Pay Act ("EPA")(29 U.S.C. § 206(d)), as well as New York State Executive Law, Section §290 [Human Rights Law]; New York State Labor Law §198, and any other cause of action which can be inferred from the facts set forth herein.

NATURE OF THIS ACTION

and information and belief as follows:

Plaintiff, through her attorneys, WOLF & WOLF, LLP, alleges upon personal knowledge

Defendants.
-----X

AMERICAN REAL ESTATE PARTNERS, L.P.
AMERICAN REAL ESTATE HOLDINGS, L.P.
JOHN D. SALDARELLI, and
HENRY J GERARD,

-against-

Plaintiff,

BARBARA LEVENBERG,

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

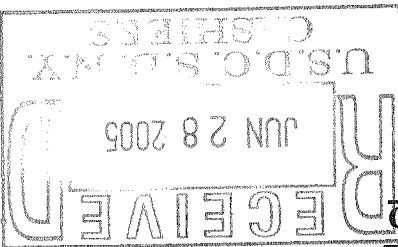
Case No.

6012

COMPLAINT

JURY TRIAL

DEMANDED



JUDGE WOOD

Partners L.P., responsible for administering the Accounting Department.

John Saldarelli was and is, *inter alia*, the Chief Financial Officer of American Real Estate

7. On information and belief, at all times hereinafter mentioned the individual defendant

Kisco, New York and manage the holdings of Carl Icahn.

Petitioner's employers doing business in the State of New York at 100 South Bedford Road, Mt.

6. On information and belief, at all time hereinafter mentioned the 'L.P.' defendants are

will be more fully set forth below.

since the filing of the SDHR complaint some of her duties have been taken away from that which

½ years. Petitioner's current title is Assistant Comptroller at a salary of \$69,000. However,

Partners, L.P. and American Real Estate Holdings, L.P., having been employed for a period of 12

and employee in good standing of the partnership entities the defendants American Real Estate

5. Plaintiff is a resident of Hartsdale, New York located in Westchester County. She is

THE PARTIES

days of Plaintiff's receipt of her Right to Sue letter.

Sue letter dated January 14, 2005, which is attached as Exhibit B. This action is filed within 90

Opportunity Commission [a copy of which is attached as exhibit A, and has received a Right to

a formal administrative complaint (Charge Number 16G200405205) with the Equal Employment

4. The jurisdictional prerequisites to this lawsuit have been completed. Plaintiff has filed

3. Venue is proper pursuant to 28 U.S.C. §1391.

of supplemental jurisdiction and the aforementioned statutory and Constitutional provisions.

2. The jurisdiction of this Court is invoked under 28 U.S.C. §1331, and 1343 the doctrine

complaint with the State Division of Human Rights.

d. Retaliation: The plaintiff has been discriminated against for filing the initial

the Federal Tax Laws.

age to contribute additional monies to her 401K pursuant to the recent "catch up" provisions to

conditions that the Plaintiff. Plaintiff has also been denied the right given to individuals of her

defendants employ younger employees who are afforded advancement and better working

The Defendants have violated State and Federal Laws against age discrimination in that the

of age and is a member of a protected class under Federal and State anti-discrimination laws.

c. Violations of Age Discrimination in Employment Laws: Petitioner is over forty years

individual.

work that is the same or similar to at least one male employee without equality in pay with that

b. Violation of the Equal Pay Act: As the Assistant Comptroller, the Plaintiff performs

compensation or higher rate of increase after a short period of tenure.

defendants have failed to promote the plaintiff hiring, instead, two male employees at a higher

schedules, overtime pay, bonuses, comp time, flextime, and choice of vacation. Moreover, the

males are given more favorable terms and conditions of employment extending from salary

Gender Discrimination in the terms and conditions of employment in that similarly situated

a. Gender Discrimination: Defendants have violated Federal and State Law against

terms and conditions of her employment as follows:

10. The Respondents, and each of them, have discriminated against the Petitioner in the

9. The Respondent partnership entities employ more than 17 individuals.

alio, the Comptroller of the LP defendants.

8. At all times hereinafter mentioned, the Defendant Henry J. Gerard was and is, *inter*

\$100,000.00 more than \$31,000.00 than the Plaintiff earned after 13 years.

A and C the Defendants hired a male assistant controller for the 'LP's at a pay rate of

16. On September 15, 2004 after the filing of the SDHR complains annexed as Exhibits

FACTS CONSTITUTING RETALIATION AND FAILURE TO PROMOTE

surreptitious attempt to redefine her role in response to the first SDHR complaint.

15. The withdrawal and marginalization of plaintiff's job duties also constituted a

marginalizing her position as more particularly set forth therein.

14. The complaint alleges that the Petitioner had been stripped of job duties thus

is annexed as Exhibit C.]

Plaintiff filed a further complaint for retaliation and hostile work environment [a copy of which

13. After the filing of the aforementioned SDHR complaint, to wit, in April, 2004, the

FACTS CONSTITUTING RETALIATION

disabled.

elsewhere as a result of the aforesaid treatment and has been rendered sick, sore, lame and

12. Plaintiff has endured pain, suffering, and humiliation at her place of employment and

favorably compensated for the same or similar work.

at least two years prior thereto male employees doing the same or similar work were more

11. On information and belief, eleven days before signing the SDHR complaint, and for

maintained a hostile work environment.

maintained and fostered a hostile work environment. Consequently, the Defendants have

continuing. Based upon the frequency and severity of this conduct, Defendants have created,

e. Hostile Work Environment: All of the above conduct is severe and pervasive and is

suffer severe and lasting embarrassment, humiliation and anguish, and other incidental and

23. As a proximate result of Defendant's actions, Plaintiff has suffered and continues to

Plaintiff that Plaintiff was less competent than others in the department.

treatment, with the untrue implication to Plaintiff's peers, co-workers and others in contact with

professional reputation and credibility by their actions, wherein subjecting Plaintiff to such

performance, on the basis of her age. Defendant repeatedly tarnished Plaintiff's personal and

Employment Act by denying her similar privileges of employment, inconsistent with her work

22. Defendant discriminated against Plaintiff in violation of the Age Discrimination in

from discriminating in employment decisions on the basis of age.

Age Discrimination in Employment Act (29 U.S.C.A., section 621), and as such was prohibited

21. At all times material hereto, Defendant was an employer within the meaning of the

group of workers over the age of 40.

employment on the basis of age, in that Plaintiff was a member of the protected and recognized

Discrimination in Employment Act (29 U.S.C.A. Section 621), prohibiting discrimination in

20. Plaintiff was at all times material hereto an employee covered by the Age

through 18.

19. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1.

AS AND FOR A FIRST CAUSE OF ACTION AGAINST THE LP DEFENDANTS FOR AGE DISCRIMINATION

18. The Petitioner was not offered the position although she was qualified therefor.

younger than the Complainant.

responsibilities that are now assigned to him were offered to a male Assistant Comptroller who is

17. Prior to the employment of the new male Assistant Comptroller, the duties and

SDHR complaint.

29. The disparity in pay aforesaid was not discovered until shortly before the filing of the responsibility and is performed under similar working conditions.

employees in the same establishment for work that requires substantially equal skill, effort, and have failed and is failing to pay Plaintiff at the same rate it has been and is paying male

28. Upon information and belief, from 2001 and continuing into the present, Defendants

same force and effect as if herein more fully set forth.

27. Repeats and realleges each and every allegation set forth in paragraphs 1-24 with the

AS AND FOR A THIRD CAUSE OF ACTION
UNDER THE EQUAL PAY ACT AGAINST THE LP DEFENDANTS

seq.

discrimination against plaintiff on the basis of her gender, in violation of 42 U.S.C. § 2000e et

26. Defendant's acts, practices, and policies described herein constitute intentional

same force and effect as if herein more fully set forth.

25. Repeats and realleges each and every allegation set forth in paragraphs 1-24 with the

AS AND FOR A SECOND CAUSE OF ACTION
FOR GENDER DISCRIMINATION AGAINST THE
LP DEFENDANTS.

Plaintiffs rights. In addition, the conduct was willful, entitling Plaintiff to liquidated damages.

malicious, fraudulent and oppressive manner intended to injure Plaintiff, was with an improper motive amounting to malice and spite caused by bias and was done in conscious disregard of

24. The conduct of Defendant was outrageous, was done in a deliberate, callous, consequential damages and expenses, all to Plaintiffs damage in an amount according to proof.

fully set forth herein.

37. Plaintiff repeats and realleges the allegations set forth in all previous allegations as if

SIXTH CAUSE OF ACTION
NEW YORK LABOR LAW § 198 AGAINST THE LP DEFENDANTS

Executive Law to the extent allowed under the applicable sections.

constituted illegal retaliation under Title VII, Federal Age Discrimination Statutes, and the State

36. All of the conduct that occurred after filing the first SDHR Complaint [Exhibit A]

with the same force and effect as if herein more fully set forth

35. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-33

AS AND FOR A FIFTH CAUSE OF ACTION
AGAINST THE LP DEFENDANTS FOR RETALIATION

State Executive Law § 290

34. The conduct aforesaid constitutes discrimination and retaliation under New York

with the same force and effect as if herein more fully set forth.

33. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1-32

AS AND FOR A FOURTH CAUSE OF ACTION
DISCRIMINATION UNDER THE NEW YORK STATE EXECUTIVE LAW
AGAINST THE LP DEFENDANTS

206(d)] is willful.

32. Defendants' violation of Section 6(d) of the Equal Pay Act ("EPA") [29 U.S.C. §

Act ("EPA") [29 U.S.C. § 206(d)].

31. By virtue of the foregoing, Defendants have violated Section 6(d) of the Equal Pay

\$100,000.00

30. The disparity continued in the in the 2004 hiring of an assistant controller for

38. As the result of the foregoing, defendant has violated New York Labor Law § 198

and plaintiff has been damaged.

FOR A SEVENTH CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS AS AIDERS AND ABETTORS

39. Plaintiff repeats and realleges each and every allegation in paragraphs 1-38 with the

same force and effect as if herein more fully set forth.

40. The conduct alleged herein was perpetrated by the individual defendant's John D.

Saldarelli and Henry J. Gerard.

41. By the acts alleged herein, the individual defendants are liable to plaintiff I for aiding

and abetting the illegal acts of the LP defendants under NYSHRL.

WHEREFORE, Plaintiff demands as follows:

a. Compensatory damages


b. Punitive damages;

c. Cost of suit and attorneys fees;

d. Such other and further relief as the Court/Jury may deem just and proper.

Dated: Bronx, New York
June 28, 2005

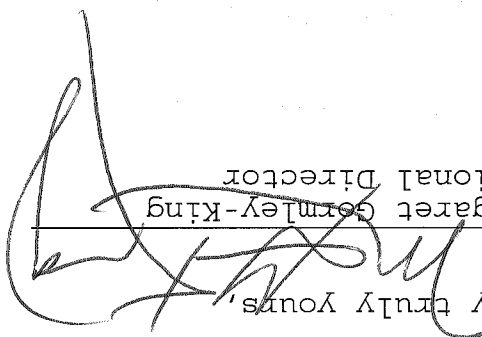
By:

WOLF & WOLF LLP
Attorneys for Plaintiff

EDWARD H. WOLF (EW-0656)
910 Grand Concourse, 1F
Bronx, New York 10451
(718) 410-0653

02/04/04

/rxc

Complainant Letter (INV.11)

Very truly yours,

Margaret Gormley-King
Regional Director

Thank you for your cooperation.

To protect your rights, it is essential that the Division be advised promptly at all times of any change of address.

Please notify us immediately of any change in your address and telephone number should you move. A form is enclosed for this purpose.

You will be contacted by the Human Rights Specialist assigned to your case when the active investigation of your complaint begins.

Please be advised that this office has received your verified complaint and it is now part of the Division's case load. The Division, except for critical exceptions, investigates complaints chronologically by date of filing.

Dear Ms. Levenberg:

SDHR No: 3-E-AS-04-125556-A

American Real Estate
Partners, L.P.; American
Real Estate Holdings,
L.P.; John D.
Saldarelli, and Henry J.
Gerard

Re: Barbara Levenberg

Barbara Levenberg
33 Holmes Avenue
Hartsdale, NY 10530

Michelle Cheney Donaldson
Commissioner
Date: 02/04/04

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
DIVISION OF HUMAN RIGHTS
8 John Walsh Blvd. - Suite 204
Peekskill, NY 10566
(914)788-8050
(914)788-8059 Ext. FAX

02/04/04

/rxc

Complainant Letter (INV.11)

(Date)

(Complainant's Signature)

TELEPHONE NO: ()

ADDRESS:

NAME:

Please indicate below the name, address and telephone number of a person who may be contacted if the Division cannot locate you at the address you have provided.

(Date)

I WILL BE AT MY NEW ADDRESS ON AND AFTER:

NEW ADDRESS:

BUSINESS TELEPHONE NO: ()

NEW TELEPHONE NO: ()

COMPLAINANT'S NAME: Barbara Levenberg

American Real Estate
Partners, L.P.;
American Real Estate
Holdings, L.P.;
John D. Salarelli,
and Henry J. Gerard

CASE TITLE: Barbara Levenberg vs.

SDHR NO: 3-E-AS-04-125556-A

PLEASE PRINT

NEW YORK STATE DIVISION OF HUMAN RIGHTS
DO NOT JEOPARDIZE YOUR RIGHTS. COMPLETE AND RETURN
THIS FORM TO THE REGIONAL OFFICE IF YOU MOVE.

02/04/04

/rxc

Complaint: Title VII/ADEA (INT.10) (1 of 2)

The particulars are:
(See attached complaint received from the complainant's attorney,
Edward H. Wolf).

Date most recent or continuing discrimination
took place 12/19/03.

I, Barbara Levenberg, residing at 33 Holmes Avenue, Hartsdale, NY
10530, Tel. No. (914) 288-8056H, (914) - charge the above-named
respondent whose address is 100 South Bedford Road Mount Kisco, NY
10549 with an unlawful discriminatory practice relating to
Employment in violation of Article 15 of the Executive Law of the
State of New York (Human Rights Law) because of Age and Sex.

TITLE VII/ADEA: Federal Charge No: 16GA405160

(State Division of Human Rights on the Complaint of)	
COMPLAINANT	Barbara Levenberg
- against -	
RESPONDENT	American Real Estate Partners, L.P.; John D. Saldarelli, and Henry J. Gerard

EXEC. LAW ART. 15
SDHR NO:
3-E-AS-04-1255556-A

STATE OF NEW YORK: EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

Mt. Kisco, New York, 10549.

are Petitioners employers doing business in the State of New York at 100 South Bedford Road,

2. On information and belief, at all times hereinafter mentioned the 'L.P.'. Respondents

years. Petitioner currently functions as Assistant Comptroller at a salary of \$69,000.00

good standing with the above partnership entities having been employed for a period of 12 1/2

female, residing at 33 Holmes Avenue, Hartsdale, New York, 10530, and is an employee in

1. At all times hereinafter mentioned the Petitioner, Barbara Levenberg, a 54 year old

Human Rights alleges and states as follows:

BARBARA LEVENBERG, as and for administrative complaint to the State Division of

FOIA # 166-A4-05160

X

Respondents.

JOHN D. SALDARELLI, HENRY J. GERARD,

hereinafter referred to as the 'LP respondents' and

Partners, L.P.)

(a subsidiary of Respondent American Real Estate

AMERICAN REAL ESTATE HOLDINGS, L.P.

AMERICAN REAL ESTATE PARTNERS, L.P.

-against-

Petitioner,

VERIFIED COMPLAINT

SDNY #

3-E-AS-04-125556 #

BARBARA LEVENBERG,

X

STATE OF NEW YORK
DIVISION OF HUMAN RIGHTS

3. On information and belief, at all times hereinafter mentioned the individual Respondent John Saldarelli was and is, *inter alia*, the Chief Financial Officer of American Real Estate Partners L.P. responsible for administering the 'L.P. respondents' [hereinafter referred to as an aider and abettor.]
4. At all times hereinafter mentioned the Respondent, Henry J. Gerard was and is, *inter alia*, is the vice president and comptroller of the 'LP respondents' and Petitioner's immediate supervisor [hereinafter referred to as an aider and abettor.]
5. The Respondent partnership entities employ more than 17 individuals.
6. The Respondents, and each of them, have discriminated against the Petitioner in the terms and conditions of her employment as follows:
- a. Gender Discrimination: Respondents have violated Federal and State Law against Gender Discrimination in the terms and conditions of employment in that Males are given more favorable terms and conditions of employment extending from remuneration [salary schedules, overtime pay, bonuses, comp time, flexibility [flexitime] and choice of vacation.
- b. Violations of Equal Pay Act. As the Assistant Comptroller, the Petitioner performs work that is the same or similar to at least one male employee without equality in pay with that individual.
- c. Violations of Age Discrimination in Employment Laws. Petitioner is over forty years of age and is a member of a protected class under Federal and State anti-discrimination laws.

The Respondents have violated State and Federal laws against age discrimination in that the respondents employ younger employees who are afforded advancement and better working

conditions than the Petitioner. Petitioner has also been denied the right given to individuals of her age to contribute additional monies to her 401K pursuant to the recent "catch up" provisions to the federal tax laws.

7. The most recent act of discrimination relating to the terms and conditions of her employment was December 19th, 2003 relating to disparity in bonuses and salaries in that individuals doing the same or similar work were more favorably compensated for the same or similar work.

8. In addition to the foregoing, the individual respondents have been aiders and abettors to the partnership entities in that they have caused the conditions aforesaid to exist and continue on behalf of the Partnership entities.

9. The Petitioner has been unjustly and illegally treated all of which has rendered her sick, sore, lame and disabled.

WHEREFORE, it is respectfully requested that a finding of 'probable cause' issue, and the Respondents be compelled to pay the Petitioner front pay, back pay, attorney's fees, together with whatever equitable relief that seems just and necessary in the premises.

Dated: Bronx, New York
December 31, 2003

BARBARA LEVENBERG

